

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Implementation of Section 309(j) of the)	MM Docket No. 97-234
Communications Act -- Competitive Bidding)	
for Commercial Broadcast and Instructional)	
Television Fixed Service Licenses)	
)	
Reexamination of the Policy Statement)	GC Docket No. 92-52
on Comparative Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to Expedite)	
the Resolution of Cases)	
)	

PETITION FOR RECONSIDERATION

Snyder Hill Broadcasting, Inc. ("Snyder Hill"), by its counsel, herewith submits its petition for reconsideration in the above-captioned proceeding. In support whereof, the following is stated:

1. Snyder Hill is the successor-in-interest to Linear Research Associates ("Linear") which filed comments in this proceeding on January 26, 1998 and reply comments on February 17, 1998. Linear and Kevin O'Kane were two of the three applicants for a new television broadcast station on Channel 52 at Ithaca, NY. They merged to form a new applicant – Snyder Hill. As a result there are now 2 parties to the proceeding - Snyder Hill (File No. BPCT-950320KH) and William M. Smith (File No. BPCT-941107KG). Snyder Hill herewith incorporates by reference the Comments and Reply Comments filed by its predecessor (Linear) in this proceeding.

2. In adopting its new auction rules the Commission made the following

determinations:

1. We will not, prior to the auction, review the long-form applications previously filed by the pending applicants, nor will we accept amendments to these previously-filed long-forms. In addition, before the auction we will not consider petitions to deny already filed, or accept additional petitions, against pending applications, nor consider any questions raised in such petitions relating to the tenderability or acceptability of the pending long-form applications. Although some commenters called for the review of all pending applications and petitions to deny prior to auction, we believe that the interests of this group of pending applicants will be best served overall by our approach. Only those pending applicants who ultimately become winning bidders will need to expend time and resources to amend their long-form applications. Moreover, if we were to review all of the considerable number of pending applications, and any petitions to deny against them, prior to an auction, we would delay the commencement of bidding significantly. Proceeding to the auction as expeditiously as possible will not only end the administrative limbo in which these pending applications have been caught, but will also result in the licensing of new broadcast stations to serve the public more quickly.

2. Following the close of the auction and the issuance of a public notice announcing the winning bidders, we will require each winning bidder to submit a down payment on its winning bid(s) within ten business days, and to make any necessary amendments to its previously-filed long-form application(s) within 30 days. The winning bidders' long-form applications would then be placed on public notice, thereby triggering the filing window for petitions to deny. Even in those rare instances in which the filing window for petitions to deny against the winning bidder's application had fully or partially run prior to the enactment of the Budget Act, we will, consistent with the procedures adopted herein for petitions to deny following an auction generally, allow ten days for the filing of petitions to deny. *See infra* ¶ 165. We believe this approach is appropriate and not unduly burdensome, particularly given the rarity of the situation and the abbreviated petition to deny period for auction winners' applications. We will also, at this time, consider any pending petitions to deny that were previously filed against the winning bidder. For the reasons discussed in greater detail in ¶ 99 below with respect to the frozen hearing cases, we will consider site assurance and financial qualification issues raised in any petition to deny only to the extent they involve allegations of false certification.

3. If the Commission denies any petitions to deny and otherwise determines that the applicant is qualified, we will then follow our general procedures set forth herein for payment and for issuing the construction permit to the winning bidder. *See infra* ¶ 166. The previously-filed long-form applications of the unsuccessful competing bidders will be dismissed following the grant of the winning bidder's construction permit. If, however, the winning bidder fails to remit the required payments, is found unqualified to be a licensee, or is otherwise disqualified, we will exercise our discretion to offer the construction permit to the other highest bidders in descending order at their final bids. Because Congress has

expressly restricted participation in any auction of the mutually exclusive applications subject to Section 309(l) to the pending pre-July 1st applicants, we believe that offering any construction permit upon which the winning bidder defaults to the next highest bidders, rather than reauctioning the construction permit to new applicants, would comport with statutory requirements and would be more expeditious.

4. In organizing the auction of the pre-July 1, 1997 pending broadcast applications subject to the comparative freeze, the Commission retains the discretion to conduct a combined auction of some or all pending applications subject to competitive bidding, or to conduct separate auctions for the different services. We also retain the discretion to include some or all of these pending broadcast applications when the Commission holds auctions of unsold or defaulted licenses in other services. [Footnotes omitted].

3. Under the Commission's above-quoted ruling, the Commission will not consider the petitions to deny which are currently pending in the Ithaca proceeding until after an auction is held.¹ This procedure is grossly unfair and deprives Snyder Hill of due process contrary to the clear wording of Section 309(j) of the Communications Act (which must be interpreted in a way that preserves the constitutionality of the law). Under the procedure adopted by the Commission, Snyder Hill will be forced to bid against an unqualified applicant when, in fact, only "qualified" applicants are eligible under the Act which reads:

(1) General Authority. - If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection. [emphasis added].

4. Snyder Hill will be prejudiced if required to follow the Commission's procedures as currently adopted because it will be placed in the impossibly awkward position of bidding against an applicant which it knows to be unqualified under current

¹ The nature of these pleadings is for the most part outlined in the Comments filed by Linear. In addition, a motion to dismiss has been filed which demonstrates that the competing application of Smith was defective as filed in that it fails to place any portion of a City Grade signal over the proposed city of license, which should have led the Commission to reject the application from its outset.

Commission definitions of that term but without the assurance that the Commission will ultimately hold a fair hearing on the issue of qualifications.² If the Commission held the hearing in advance and found that the competing applicant was not qualified, Snyder Hill would not be required to bid at an auction.³ More importantly, if the competing applicant were found to be qualified, Snyder Hill would know where it stood in the auction and not be forced into an auction “gamble.” As the rules are written now, Snyder Hill will be required by the FCC to gamble at the auction. Instead of a fair auction, Snyder Hill will be forced into a Texas stakes poker game. It will have to decide whether its opponent is bluffing,⁴ or whether it is in fact a *bona fide* applicant.

5. If Snyder Hill calls the other applicant’s bluff, lets it bid the highest amount, and goes to hearing to prove that the competing applicant is not qualified, the Commission’s processes will be reduced to the fairness of a Las Vegas casino – since the applicant has no way of knowing for sure whether the competing applicant will be held unqualified by a government agency motivated by the desire to collect the money from the winning bidder to the detriment of its public interest obligation to assure that only “qualified” applicants are granted permits. Certainly, this is not what Congress envisioned in adopting the auction rules. It is also short-sighted since a pre-auction determination would better serve

² The Commission has already held in this proceeding that “we will consider site assurance and financial qualification issues raised in any petition to deny only to the extent they involve allegations of false certification” which indicates that it has already begun to modify the definition of “qualified.” Snyder Hill also requests reconsideration of this aspect of the new rules and any change in the definition of a “qualified” applicant. The definition should be the same as it was at the time these applications were filed and certainly no different from what it was when Congress enacted legislation permitting only “qualified” applicants to bid. Presumably Congress did not intend for the Commission to modify the definition after the enactment of the legislation.

³ Thus avoiding the unfair taking of its bid money which it should not have to pay when the competing applicant is unqualified and thus not eligible to bid.

⁴ The competing applicant has resisted on procedural grounds filing a pleading which would demonstrate that it is in all respects qualified.

governmental interests regardless of the outcome. A finding that the applicant was qualified would lead to the strongest bidding situation and thus the most money for the government. A pre-auction determination that the applicant was not qualified would also serve governmental interests because it would provide the best assurance that only qualified applicants would obtain permits.

6. The Commission's instant rules would violate other long-held public interest concerns. Specifically, the adopted rules by their nature are prejudicial to minority applicants who do not have unlimited funds to play high-stakes poker. For example, if Snyder Hill were a minority organization with limited funds available to outbid its otherwise unqualified competitor, it could lose to an applicant which under precedent at the time it filed its application was clearly not qualified.⁵ If, on the other hand, the minority applicant pays a substantial amount of money to win the bid, this is money that it would not otherwise have been required to pay and which could have been used to finance the station. This is just another example of a rule which favors "fat cats" against those who have been historically disadvantaged.

7. Based on the foregoing, it is clear that in cases such as that faced by Snyder Hill in Ithaca, the rules as adopted do not serve the public interest, convenience and necessity. Snyder Hill recognizes that in multiple-party hearings the same dynamics do not apply as they do in two-party hearings. Where there are three or more parties, a hearing in advance on the qualifications of one party would not obviate the need for an auction since there would still be more than one party left. Accordingly, Snyder Hill seeks reconsideration

⁵ Only very well-financed applicants can be realistically expected to litigate after already having lost an auction -- being thus forced to spend substantial sums with little prospect of success, particularly in light

only to the extent required to cover cases similar to the Ithaca proceeding.⁶ In other words, the Commission should provide in its rules that when an issue has been raised as to the qualifications of one of the parties in a two-party proceeding,⁷ involving pre-July 1, 1997 pending broadcast applications, the Commission should decide the qualifications issue in advance of any auction.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant reconsideration to the extent requested herein (including the issue raised in footnote 2 hereinabove)⁸ and require a pre-auction hearing on qualifications issues where a finding that a party was not qualified would eliminate the need for an auction.

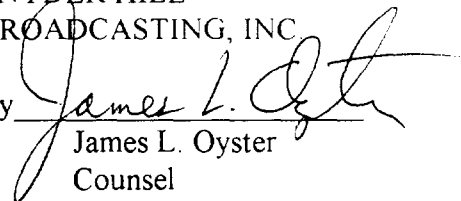
Respectfully submitted,

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October 13, 1998

SNYDER HILL
BROADCASTING, INC.

By


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Counsel

of the Commission's apparent relaxation of what will be considered in determining whether an applicant is qualified.

⁶ It is believed that this would be a relatively small number of cases and thus would have little impact on the overall operation of the rules while correcting an injustice in a small number of cases where an auction would not be necessary if one of the applicants were held to be unqualified.

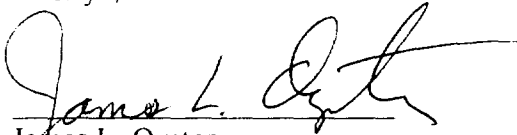
Including cases such as this where a proposed settlement has reduced the number of competing applicants to two.

⁸ In cases involving pre-July 1, 1997 broadcast applications, petitions to deny will be permitted based on the case law as it stood prior to July 1, 1997.

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing pleading by first class U.S. mail, postage prepaid, on or before the 13th day of October, 1998, to the following:

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